

REMARKS

Applicants request favorable reconsideration of this application in view of the foregoing amendments and the following remarks. Claims 1, 2, 4-11, 13, and 26-38 were pending in the application. Claims 26-38 stand withdrawn and claims 1, 2, 4-11, and 13 were rejected in the Office Action. By way of this amendment, claims 7 and 8 have been amended to be in independent claim format. In addition, claim 13 has also been amended and withdrawn claim 28 has been canceled. No new matter has been added.

1. Rejection of Claims 1, 2, 4-10

The Examiner rejected claims 1, 2, 4-6, 9, and 10 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,095,239 ("Makino"). In addition, the Examiner rejected claims 7 and 8 under 35 U.S.C. § 103(a) as being obvious in view of Makino. Applicants respectfully traverse each of these rejections.

a. Rejection of Claims 1, 2, 4-6, 9, and 10

As hereafter explained in detail, the rejection of claims 1, 2, 4-6, 9, and 10 should be withdrawn because Makino fails to teach or suggest each of the limitations of claim 1. Specifically, claim 1 recites: (a) a plurality of first louvers; (b) a plurality of second louvers; (c) a third louver "in the vicinity of an innermost one of said first louvers," and (d) that the third louver "is constructed to obstruct a heat transfer in the fin." By way of contrast, the parallel louvers 67 (which may be analogous to the recited third louver) are not "in the vicinity of an innermost one of said first louvers." *See* U.S. Pat. No. 6,095,239 at Figs. 21-23 (cited by Examiner). Rather, the parallel louvers 67 are closer to the second heat exchanger 23 (which may be analogous to the recited second plurality of louvers). *See id.* Moreover, this is not merely a matter of semantics, as Makino teaches that the operating temperature of the first heat exchanger 21 is higher than the operating temperature of the second heat exchanger 23. *See id.* at col. 9, lines 32-39. As a result, as the parallel louvers 67 are away from the (hotter) first heat exchanger 21, they can not serve "to obstruct a heat transfer in the fin," as recited in claim 1.

As Makino fails to teach or suggest each limitation of claim 1, it can not be used to reject the claim, or any claim dependent thereon, under § 102(e). Therefore, the rejection of claim 1 under § 102(e) should be withdrawn. Further, as each of claims 2, 4-6, 9, and 10 depends from claim 1, each of these claims is also allowable over Makino, without regard to the other patentable limitations recited therein. Accordingly, Applicants respectfully request a withdrawal of the rejection of claims 1, 2, 4-6, 9, and 10 under § 102(e).

b. Rejection of Claims 7 and 8

The rejection of claims 7 and 8 is traversed under 35 U.S.C. § 103(c) which precludes the application of prior art, under 35 U.S.C. § 103(a), which was commonly owned at the time of the recited invention. Specifically, § 103(c) provides (with italic emphasis added):

- (c) Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, *shall not preclude patentability under this section* where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person

6 In this case, at the time of the invention, the CalsonicKansai Corporation was the assignee of both Makino and the current application. Accordingly, § 103(c) precludes the applicability of Makino under § 103(a) and, therefore, the rejection of claims 7 and 8 under § 103(a) must be withdrawn. Finally, to expedite prosecution, claims 7 and 8 have been amended to be in independent claim format.

2. Rejection of Claim 13

The Examiner rejected claim 13 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,033,540 ("Tategami"). For the following reasons, Applicants respectfully traverse this limitation.

withdrawn
now?
yes
Claim 13 has been amended to recite each of the limitations of withdrawn claim 28 (which has correspondingly been cancelled). Specifically, claim 13 has been amended to recite: "wherein said heat radiation portions are auxiliary louvers, and wherein each auxiliary louver is smaller in size than each of the first and second louvers." Clearly, Tategami's zigzag continuous portion 3 (which may be analogous to the recited flat connection part formed with a plurality of heat radiation portions) does not define a plurality of auxiliary louvers which are "smaller in size than each of the first and second louvers." See U.S. Pat. No. 5,033,540 at Figs. 2-5 (cited by Examiner).

Therefore, as Tategami fails to teach or suggest each limitation of claim 13, it can not be used to reject the claim, or any claim dependent thereon, under § 102(b). Accordingly, Applicants respectfully request a withdrawal of the rejection of claim 13 under § 102(b). However, if the Examiner determines that this amendment to claim 13 brings it within the non-elected species, Applicants continue to reserve the right to file one or more divisional applications for claim 13 and each claim dependent thereon.

3. Withdrawn Claims 26, 27, and 29-38

As each of withdrawn claims 26, 27, and 29-38 depends from either claim 1 or claim 13, each of these dependent claims recites all of the limitations of its respective base claim. Accordingly, as the limitations of claims 1 and 13 are allowable, claims 26, 27, and 29-38 are also allowable, without regard to the other patentable limitations recited therein.

CONCLUSION

For the reasons stated above, claims 1, 2, 4-11, 13, 26, 27, and 29-38 are now in condition for allowance. A Notice of Allowance at an early date is respectfully requested. The Examiner is invited to contact the undersigned if such communication would expedite the prosecution of the application.

Respectfully submitted,

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Date

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